

Defendants.

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REPLY DECLARATION OF LYNN BERNSTEIN

**DECLARATION OF LYNN BERNSTEIN
PURSUANT TO 28 U.S.C. § 1746**

Pursuant to 28 U.S.C. § 1746, Lynn Bernstein hereby declares as follows:

1. My name is Lynn Bernstein. I am the plaintiff named in the above-captioned lawsuit. I am over the age of 18 and competent to testify to the matters stated herein, all of which are based on my personal knowledge. I suffer from no disability that prevents me from making this declaration. All of the statements made herein are true and accurate to the best of my knowledge, information, and belief.
2. I am submitting this declaration in support of my reply filed to support my pending motion for preliminary injunction.

3. I have reviewed all of the pleadings and other filings made with the Court in this matter, including Defendants' response in opposition to my motion for preliminary injunction and the supporting documents.
4. I am aware that Defendants accuse me of tampering or otherwise interference with a gate on BOE property on May 14, 2022. This is emphatically false.
5. At no time on May 14, did I tamper with the gate, enter through the gate, or even go past the fence-line surrounding BOE property. I remained outside the fence at all times and never touched the fence or gate.
6. A map of the area around the Wake BOE property is attached hereto as **Exhibit 1**. I prepared this map by taking a Google satellite image of the Operations Center and nearby properties, to which I added true and accurate labels and markings of where I parked and where Mr. Brakey and I walked. The map also shows the location of gates and fence-line surrounding the Operations Center. The path where we walked from my vehicle along the right of way on N. New Hope Road, towards the Walgreens and then back to my car can be seen on a map.
7. Surveillance video footage obtained from Wake Security shows that I never went through the gate, did not tamper with the gate, and did I go beyond the fence-line surrounding BOE property. A true and accurate

copy of that video that was obtained pursuant to public records requests to Wake County will be submitted herewith as **Exhibit 2**.

8. Defendants state in one of their submissions that the safety sensor for the gate is on the inside of the parking lot near the gate. If this is true, I could not have triggered the gate since I was standing on the outside of the gate and fence line the entire time.
9. Janice Carter, a hired security guard from Allied Universal Security Services, states in her “Daily Officer’s Report,” which is attached to her Affidavit that, “It was at this time that Wake County Security notified Gary that a white male” had activated the gate’s safety sensor, which momentarily prevented the gate from closing. I am not a white male.
10. On May 14, 2022, I chose to park off site after seeing activity going on at the Wake Board of Elections building. On the west and southern side of the building, the temporary “No Public Parking” sign and equipment distribution signs in the front parking lot where I normally park indicated that an election process was taking place in front and on the south side of the building. Therefore, I continued driving to the next public parking lot, which is on the north side of the BOE building. The noticed “Board of Elections Event” was near here. Board of Elections Events are open to the public.

11. I entered the West Shore Home parking lot, across the street from the Wake Board of Elections building, at approximately 4:29 pm and parked for 2 minutes and 50 seconds. There were three cars parked in front and a truck parked at the end of the driveway, which can be seen on my car's dash-cam footage. A true and accurate excerpt of that video will be submitted herewith as **Exhibit 3**. After realizing that West Shore Home was still open, and not wanting to interfere with its operations, I decided to park at ABC Supply Company, which is adjacent to the BOE property.
12. Officer Carter's Affidavit incorrectly states that I was parked at West Shore Home for 15 minutes. Wake Security surveillance video shows Officer Carter checking her watch as I pull into the West Shore Home parking lot and again she checks her watch after I park at ABC Supply Company at approximately 4:34 pm. True and accurate video showing this activity will be submitted herewith as **Exhibit 4**. The time difference between when she checks her watch the first and second time is 5 minutes, not 15 min that she attests to in her Affidavit.
13. Also, in her affidavit, Officer Carter incorrectly states that she only noticed my car because all the other vehicles had left for the day and that West Shore Home was not open. The Google business listing for West Shore Home states that the hours of operation on Saturdays are from 8am to 8pm. See **Exhibit 5**, attached hereto.

14. Approximately, seven minutes after we parked at ABC Supply Co., Officer Carter, at the direction of Defendant Sims, called Raleigh Police concerning us, even though we were not on BOE property and were not doing anything illegal. When she calls, Officer Carter apparently misrepresents herself as an off-duty officer to Raleigh Dispatch. Defendant Sims had her call while we were still on the adjacent property, just standing next to my vehicle and observing the election processes taking place at the BOE property. Officer Carter states on the **first** call to Raleigh Police, *“I'm calling at the... of the... with the... um. **on the order of... from the director** from the board of elections.”*... and later on the same call, *“They're watching the whole process. So... and. and recording it. So...er **the director asked me to call** and **state** that it's a suspicious activity.”* A true and correct transcript of this call is attached hereto as **Exhibit 6.**

15. While on the phone with Raleigh Dispatch, Officer Carter also states that “it isn’t legal” for us to be watching the election processes from the adjacent property. Officer Carter states that it is suspicious that we did not park on BOE property immediately after parking at West Shore Home as heard on the audio recording from Raleigh Police.

16. Mr. Brakey and I left my vehicle at ABC Supply Co. a few minutes after parking and began to walk north along the right of way along N. New Hope

Rd. When we reached the north driveway we were discussing where would be a legal and safe place to hold the small upcoming protest we were planning on May 17, the night of the primary election. I had no intention of entering the north parking lot where the Board of Elections Event was taking place, nor did I at any time enter into any of the BOE parking lots or ever go through the gate or past the fence surrounding the BOE property.

17. Mr. Brakey, wanting to double check that the signs along the gate, which were facing into the parking lot, did not have instructions that would have prevented us from holding the protest there on election night. He took a few steps into the parking lot and the gate immediately began to close, so he quickly exited the parking lot.
18. According to surveillance footage, at approximately 6:00 am, both gates leading to the north parking lot open at the same time. It makes little sense that only one of the two gates leading to the “public event” would be closing the exact moment that Mr. Brakey walked through it. I believe that Defendants either directly or indirectly tried to close the gate on us since the north-east gate into that same parking lot, on the north side of the building, remained open until almost exactly 8:00 pm, likely the set time for the gates to the north parking lot to close.

19. We were standing next to my car for a little over 8 minutes in the ABC Supply lot, when Officer Carter again called Raleigh Police on us, again at the direction of Defendant Sims. On this second call to Raleigh Dispatch, Officer Carter gave an exaggerated and inaccurate account of what transpired by indicating that there was an urgent and ongoing threat requiring an escalated response and use of RPD resources, “they’ve now left the vehicle and they’ve started to tamper with the gate... that is closed. So I didn't know if that would escalate, um, the priority for the call. So they’re attempting to get in by tampering with the gate. And, that is...Wake County has it on video as well.” Again, this was a full 8 minutes after we returned to my vehicle and were again not doing anything that would warrant a call to police. A true and accurate transcript of this recording will be submitted herewith as **Exhibit 7**.
20. Officer Carter requested that Raleigh Police trespass me and the person I was with, at the direction of Director Sims: “And we would like... **the director** would like to trespass both of them formally...off this property.”
21. Officer Carter initially told Mr. Brakey and me that we were being trespassed because we were “tampering with a closed gate,” but surveillance footage shows the gate had been open all day, since 6:00 am, until the exact moment Mr. Brakey walks through the gate.

22. Deputy Director McCall states in her Affidavit that she called Wake Security to close the gate because they were transitioning to the election supply distribution phase. According to surveillance video, this transition, when Chief Judges (poll workers) begin arriving to pick up equipment, begins at approximately 3:30 pm but the north gate closes at approximately 4:50 pm, the exact moment Mr. Brakey walked through the gate.
23. Defendants also submit an affidavit of a Mr. Heist, but his description of his job in the affidavit is contradicted by his LinkedIn profile, which states he has not been an “Operations Manager” with Wake County for 3 years and 8 months. Instead, he lists his current title as “Client Portfolio Manager” for Allied Universal Security Services, a position he claims he has held since March 2019. A true and accurate copy of that LinkedIn page is attached hereto as **Exhibit 8**.
24. Mr. Heist’s affidavit also states that a report was prepared by Caleb Sparks, but Caleb Sparks’ own LinkedIn page says he left the employ of Allied Universal in February 2021, over a year before he purportedly wrote the report. A true and accurate copy of his LinkedIn page is attached hereto as **Exhibit 9**.

25. The scope of the “trespass order” was unclear to me, and I feared (and continue to fear) that the Defendants will interpret it as broadly as possible to cause me as much trouble and embarrassment as they can.
26. Notably, the Defendants believe I pose a threat to the property at 1200 N. New Hope Road, which is fenced in by razor wire, then this irrational perception of the threat that I pose would be at least the same or greater at other locations under the Board’s control for voting, which also have critical election materials and less security.
27. The BOE warehouse from which I have clear been trespassed is an indisputably secure facility with armed guards, surveillance cameras, gates, and fencing with razor wire—to name but a few of its security features. By contrast my home voting precinct (Piney Planes Christian Church in Cary), being a relatively simply facility, lacks most or all of those features. Other voting precincts, which—according to Defendants—I can visit for such purposes as being a poll greeter, typically lack significant security measures as well, in my experience.
28. I am aware of the animus that Mr. Sims has towards me and believe that he has and will continue to inflict as much damage to me and my reputation as possible. I remain fearful about what other erratic action Defendant Sims might take against me while I am engaging in activities

that are both legal and that I have done before, such as standing outside of a fenced area.

29. In addition to asking my husband to ask the Board to rescind my trespassing, I took other measures. My daughter also submitted a thoughtful letter asking for the decision to be changed. For example, I wrote to Wake County Commissioner Maria Cervania seeking assistance. A true and accurate copy of that correspondence is attached hereto as **Exhibit 10.**

30. Weeks after being trespassed, I learned that Wake County has a trespass/ban policy in place. Defendants did not follow this policy with me. If they had, I would have been able to appeal within 10 days of receiving a written notice. Instead, Defendants had Raleigh police issue the trespass (verbally), and Defendants acknowledged in their filing.

31. At no time did Defendants let me or my husband know that Wake County had a trespass/ban policy, even though he went to three meetings and gave a public comment each time asking for the Board to take the required steps to afford Ms. Bernstein the ability to have her case heard.

32. Defendant banned me in a way that would afford me no due process, and no chance of appeal, with the Raleigh Police Department, by treating the Wake BOE like private property.

33. If Defendants had followed the Wake County trespass policy, several steps would have been required. This would include Defendants stating why the trespass was being issued, and I would have received 10 days to appeal. If the appeal were denied, I would be deemed an annual right to appeal for reconsiderations. This process would also have involved an independent decisionmaker.
34. I believe that Defendants continue to withhold exculpatory evidence. I have asked for but have not received all communications regarding me Mr. Brakey to or from Defendants.
35. Defendants' court filings also reference two videos "5710F BOW EX NW Main Parking 2" and "5741L BOE EX Receiving Gate 2," but did not submit either of those videos to the court or release them to me. My records request for all cameras, as well as other requests for relevant evidence, is still open and unfulfilled.
36. Even before these events, I was physically intimidated by Defendant Sims, including at the meeting of October 5, 2021, where he angrily got in my face. An Affidavit from Karen Raines is attached hereto as **Exhibit C**.
37. I have also faced adverse consequences since these events. There is an ongoing detriment to my reputation that results in discriminatory treatment and that prevents me from participating in my normal advocacy activities.

38. For example, after previously having been invited by former Charlotte Mayor, Jennifer Roberts, to join the Carter Center's Advisory Council for Fair, Safe and Secure Elections in North Carolina, I have been shut out from attending the council meetings since having to file this lawsuit, the only remedy I have to get my rights restored. Ms. Roberts informed me via email a month after filing, that "Since we have many BOE officials and Board Members as part of our educational events, I did not include you, in light of the current lawsuit. I think it would be a conflict to have you on calls with those who might be part of your lawsuit." This is preventing me from contributing to the NC town hall meetings and other setting where my advocacy would provide a meaningful benefit. The email from Jennifer Roberts is attached hereto as **Exhibit 11**.


39. While at the State Board of Elections meeting on Sept 13, 2022, I was humiliated by a member of the state board staff who treated me like I was a threat, even preventing me from petitioning the board. During the first break in that State Board of Elections meeting, I walked towards the front of the room with others to talk to members of the board who had come out from behind their seating area to engage with the public. While I was introducing myself to Mr. Stacy Eggers, a State Board of Elections member, I was immediately interrupted by a member of the state board staff who took me off to the side to have a talk with me. He told me that

in today's climate I would not be able to engage with the board even though other members of the public were not being prevented from talking with the board members. He asked what I wanted to talk to Mr. Eggers about so I told him that I wanted to give letters to each member of the board; it was a copy of a letter I had previously sent to the state back in 2020 seeking clarification for activities that non-partisan observers were allowed to engage in on election night. He asked to see the letter and then proceeded to take it to the Executive Director Brinson-Bell for approval before handing it to the members of the board. I was told that I would not be allowed to talk directly with board members.

40. The ban that Defendants have placed on me has taken a significant toll on myself and my family. It has had a negative impact on the amount of time we have to spend with one another since it has been incredibly time consuming just to clear my name. Some friends and family members have encouraged me to quit my election integrity work because they fear for my safety. And our family has felt the need to increase security at our residence and take other precautions while we are out in the community.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: October 18, 2022


Lynn Bernstein

Ex. 1

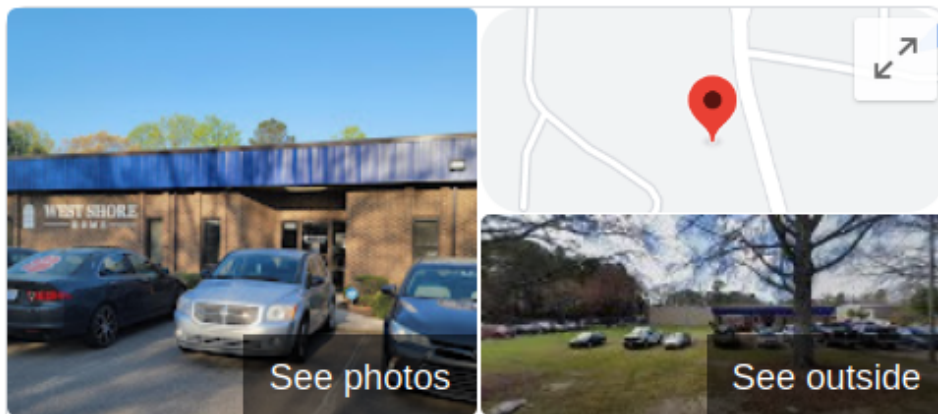


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No. 5:22-cv-00277-BO

LYNN BERNSTEIN,)
)
Plaintiff,)
)
v.)
)
GARY SIMS, individually and in)
his official capacity as Director of the)
Wake County Board of Elections; and)
WAKE COUNTY BOARD OF)
ELECTIONS,)
)
Defendants.)
_____)

EXHIBIT SLIP SHEET

This is an audio or video recording for which electronic filing on CM/ECF is not possible. Pursuant to Section V.A of the Electronic Case Filing Administrative Policies and Procedures Manual, leave to file these exhibits manually will be sought, and a copy of a USB drive with said exhibits will be submitted to the Clerk of Court in conjunction with a motion for manual filing.


[See photos](#)
[See outside](#)

West Shore Home


[Website](#)
[Directions](#)
[Save](#)

4.9 ★★★★★ 1,131 Google reviews

Contractor in Raleigh, North Carolina

Service options: Online estimates · Onsite services not available

Address: 1203 N New Hope Rd, Raleigh, NC 27610

Areas served: [Cary and nearby areas](#)

Hours: Wednesday 8AM–8PM

Thursday 8AM–8PM

Friday 8AM–8PM

Saturday 8AM–8PM

Sunday 9AM–5:30PM

Monday 8AM–8PM

Tuesday 8AM–8PM

Confirmed by this business 4 weeks ago

[Suggest new hours](#)

Phone: (919) 296-3876

Appointments: westshorehome.com

Providers ⓘ

automated voice tagging 0:00
May 14 2022 16 hours, 40 minutes 55 seconds.

911 Operator 0:09
Raleigh Wake Dispatch.

Officer Carter 0:12
Yes. Hi, this is Officer [redacted] at the Board of Elections. I'm calling in reference to a suspicious vehicle. Um. I'm calling at the... of the... with the... um. on the order of... from the director from the board of elections.

911 Operator 0:30
[interrupting] What's the address?

Officer Carter 0:30
It's 1200 New... North New Hope.

Officer Carter 0:35
The vehicle is a blue ---

911 Operator 0:37
[inaudible]

Officer Carter 0:37
---I know

911 Operator 0:38
[inaudible] the address---repeat the location and make sure I have it correct.

Officer Carter 0:43
The Board of Elections.

911 Operator 0:45
No, the address. Repeat the address.

Officer Carter 0:48
1200

911 Operator 0:50
Okay, and tell me your name, again.

Officer Carter 0:51

1200 North New Hope. Officer [redacted]. I'm an off-duty police officer.

911 Operator 0:56

And what's the phone number you're calling me from?

Officer Carter 0:58

This is my personal cell.

911 Operator 1:01

Okay, and it's a blue what?

Officer Carter 1:04

It is a blue Subaru SUV. It's located in the ABC Supply Company parking lot...Um, today is the last day for elections, and these people are very familiar with them. And they have gone from across the street from sitting there and watching us, to um, this um, parking lot over here at ABC. It's a private...

911 Operator 1:42

What do the people look like, that are in the car?

Officer Carter 1:45

So two. So one is a white female, she has a blue shirt on and the other person is a white male, he has a black shirt on.

Officer Carter 1:55

And they're just watching the board of elections?

Officer Carter 1:58

They're watching the whole process. So... and. and recording it. So...er the director asked me to call and state that it's a suspicious activity.

911 Operator 2:12

I mean, what is it the Board of Elections for? Like, the politics or like the school board or what?

Officer Carter 2:19

The Board of Elections is in control of the...elections. So the elections for the sheriff, the election for the commissioner, the election for the US Senate...

911 Operator 2:28

Okay, so politics. Okay. And are you the security officer or are you an off duty officer or...?

Officer Carter 2:36

I'm the off duty officer. [inaudible]--- police officer.

911 Operator 2:38

Okay.

911 Operator 2:41

Okay. All right. I'll get the officer to go out there to 1200 North New Hope Road. And you said they've switched back and forth across the road recording this?

911 Operator 2:51

Yeah. So they were across the street at West Shore Homes...in that parking lot. And...oh, it looks like they're walking across the street now. Back over there. So their vehicle is in the ABC supply parking lot right next to the fence. And they've left the vehicle and are walking back across the street.

911 Operator 3:17

And they're still recording everything?

Officer Carter 3:22

Um. The man has his cell phone out.

Officer Carter 3:31

His...I assume it's an iPad..., and he's got it pointing towards us. Yeah, he's taking pictures of us right now. So...

911 Operator 3:42

Okay.

911 Operator 3:44

Are they talking to each other or saying anything?

Officer Carter 3:48

Oh yeah. They're talking to...they're clearly together.

911 Operator 3:51

Okay.

Officer Carter 3:56

So. These...the director has had issues with these people before and there isn't legal for them to come over and start filming, what they're doing here, at the board of elections.

911 Operator 4:08

Does he know who they are?

Officer Carter 4:11

Yes.

Officer Carter 4:12

What's their names?

Officer Carter 4:14

The female's name is [redacted, inaudible]. ...do you know who the male is? No?

Gary Sims 4:17

I've seen him... it's her neighbor... I've seen him but not [inaudible]

Officer Carter 4:21

The male is unidentified right now.

911 Operator 4:24

Okay.

911 Operator 4:32

Okay, I'll let the officers know, okay?

Officer Carter 4:36

Okay, thank you so much.

911 Operator 4:37

Thanks.

Officer Carter 4:37

Uh-huh. Bye-bye

automated voice tagging 4:43

May 14th 2022 16 hours, 45 minutes. 51 seconds.

automated voice tagging 0:00
May 14 2022 17 hours, 4 minutes, 56 seconds.

911 Operator 0:08
Raleigh Wake Dispatch.

Unknown Speaker 0:10
Yes. Hi, this is officer [redacted] 1200 North New Hope...at the Board of Elections. I had called earlier for a suspicious vehicle. Um, the two individuals that were here...

Officer Carter 0:24
In the vehicle...have now...they've now left the vehicle and they've started to tamper with the gate... that is closed. So I didn't know if that would escalate, um, the priority for the call. So they're attempting to get in by tampering with the gate. And, that is...Wake County has it on video as well.

911 Operator 0:51
All right, and hang on one second. I'm just trying to read everything that happened. And it is a white male and a white female, correct?

Officer Carter 0:59
That's correct.

911 Operator 1:00
Okay.

Officer Carter 1:02
And they have moved to the ABC Lumber Supply, which is right next door, and they're literally watching me speak to you guys. So...

911 Operator 1:11
Okay.

Officer Carter 1:12
Um...

911 Operator 1:15
All right. And what is the name of the of the business?

Officer Carter 1:19
That they're at right now is ABC Lumber or ABC Supply.

unknown 1:23
[inaudible]

unknown 1:28
[laughing] yeah!

911 Operator 1:28
Ok. Alright, I will go ahead and update that, um, comments to the call to let the officers know.

Officer Carter 1:32
And then...

911 Operator 1:34
We do already have an officer driving there. Okay?

Officer Carter 1:35
Perfect. And we would like... the director would like to trespass both of them formally...off this property.

911 Operator 1:36
Alright, and I will go ahead and let him know that as well.

Officer Carter 1:46
Thank you ma'am, I appreciate it.

911 Operator 1:47
You're welcome. Bye.

Officer Carter 1:49
Alright, bye-bye.

automated voice tagging 1:53
May 14 2022 17 hours, 6 minutes 44 seconds.

https://www.linkedin.com/in/christopher-heist-52324b87/



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Messaging



Christopher Heist · 3rd

Client Portfolio Manager at Allied Universal
Raleigh, North Carolina, United States · [Contact info](#)

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Allied Universal

Liberty University

Activity

227 followers

Christopher Heist posted this · 1mo



Quarterly Training session for our government client. Thank you to all the officers that attended and for our client for leading the training.

0

Christopher Heist posted this · 2mo



Congratulations to Chris Robin for earning Security Officer of the month for April 2022. Chris Robin has also recently been promoted to supervisor for our government client.

7

1 comment

Christopher Heist posted this · 2mo



Congratulation to Taposhi Sarker for earning her five (5) year pin with Allied Universal. Sarker has been an important member of our team as an Access Control officer at our government client.

3

[Show all activity →](#)

Experience



Allied Universal

6 yrs 3 mos
Raleigh, North Carolina

- **Client Portfolio Manager**
Mar 2019 - Present · 3 yrs 8 mos
- **Operations Manager**
Aug 2016 - Mar 2019 · 2 yrs 8 mos



Universal Services of America

3 yrs 10 mos

- **Service Manager**
Jan 2014 - Aug 2016 · 2 yrs 8 mos
Raleigh/Durham, North Carolina Area

- **Operations Manager**
Nov 2012 - Jan 2014 · 1 yr 3 mos
Raleigh-Durham, North Carolina Area





Operations Supervisor


Security Forces Inc.
Sep 2011 - Nov 2012 · 1 yr 3 mos
Lynchburg, Virginia Area









Server/Host/Employee Training Coordinator

Cracker Barrel
Jun 2007 - Sep 2011 · 4 yrs 4 mos



 <https://www.linkedin.com/in/caleb-sparks-a840311b0/>






 Home  My Network  Jobs  Messaging





Caleb Sparks
Technical Support Representative
Colorado Springs, Colorado, United States · [Contact info](#)
25 connections
[Connect](#) [Message](#) [More](#)

 **ConstructConnect**
 **Wake Technical Community College**

Activity
26 Followers
Caleb hasn't posted lately
Caleb's recent posts and comments will be displayed here.
[Show all activity →](#)

Experience
 **Technical Support Representative**
ConstructConnect
Jun 2022 - Present · 5 mos
 **PC Specialist**
Dynamic Digital Networks, Inc. · Full-time
Feb 2021 - Jun 2022 · 1 yr 5 mos
 **Security Operations Center Supervisor**
Allied Universal · Full-time
Jan 2015 - Feb 2021 · 6 yrs 2 mos
North Carolina, United States

Education
 **Wake Technical Community College**
Associate's degree, Information Technology
2017 - 2021

Skills
IT Operations
 Passed LinkedIn Skill Assessment